



Department of Law Monthly Report

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Commercial Section

MARINE PILOT LICENSE ACTION FINALLY CONCLUDES

Like other maritime states, Alaska requires foreign-flagged vessels to employ local marine pilots to guide them through local “pilotage waters” and into ports. Marine pilots are licensed by the state. On March 21, 1994, a licensed marine pilot named David Renwick was dispatched to assist the M/V REEFER BADGER, a large cargo vessel that was being blown from its moorage in Captain’s Bay, near Dutch Harbor. The weather was severe and the pilot and vessel crew encountered problems because the chains of the vessel’s anchors were wrapped together. As strong winds blew the vessel within a couple of hundred feet of the shore, Renwick ordered astern engines. There was another vessel anchored directly behind the REEFER BADGER, however, and the captain was afraid Renwick’s order would cause a collision. The captain countermanded the marine pilot’s order, and managed to turn the vessel away from the shore and out into deeper waters. After the captain overruled his directions to the crew, the marine pilot abruptly left the bridge of the REEFER

BADGER, radioed for the pilot boat to come alongside, and literally jumped off, all while the captain and crew were desperately trying to save the ship.

Renwick had a history of prior mishaps while piloting, including at least three groundings. He had recently completed a refresher training course required by the Board of Marine Pilots (Board). Renwick told others that he was afraid that the REEFER BADGER was going to run aground, and that he couldn't afford to be on the vessel if it did, because of his license situation. (He apparently reasoned that, if he wasn't aboard when the vessel ran aground, no action could be taken against his marine pilot license.) The board summarily suspended Renwick's license, concluding that he could not be relied upon to carry out the duties of a marine pilot. Renwick challenged the summary suspension, contending that his actions had been justified, and were consistent with state law. After an administrative hearing before the board itself, the board voted to sustain the summary suspension.

On appeal, the superior court reversed the board, saying Renwick's departure was justified once the vessel master has countermanded the marine pilot's directions. The Alaska Supreme Court reversed the superior court decision, and reinstated the board's order summarily suspending the pilot's license. Meanwhile, Renwick had filed a separate superior court action, seeking a declaratory judgment regarding the constitutionality of the board regulations. Litigation over the dismissal of that action also went to the state supreme court.

After several postponements, an administrative hearing was held on an Accusation filed by the Division of Occupational Licensing seeking the revocation of Renwick's license. In April 2001, the board adopted the administrative hearing officer's 43-page proposed decision and permanently revoked Renwick's state marine pilot license. Once again, Renwick appealed the board's

decision to the superior court. Early this year Superior Court Judge Larry Card issued a decision affirming the board's revocation of Renwick's license. In February 2003, Judge Card granted the state's motion and awarded the state \$5,000 in attorney's fees in the administrative appeal. The time for appeal to the supreme court has now expired, so this long-running occupational license action has finally ended. AAG Gayle Horetski handled the case throughout its nine-year odyssey.

Fair Business Practices

GOLDEN HEART UTILITIES RATE CASE SETTLED

This rate case involving a Fairbanks water and sewer utility (GHU) was scheduled to go to hearing before the RCA on February 25, 2003. The case was settled by stipulation on February 19, 2003. GHU had sought rate increases of 45.5% for its sewer utility, and 27.1% for its water utility. The case was resolved with GHU accepting a 28.7% increase in sewer rates and 21.1% increase in water rates. AAG DeVries represented the Public Advocacy section in this proceeding.

ARCTIC SLOPE TELEPHONE ASSOCIATION RATE CASE SETTLED

This rate case involving Barrow's local telephone exchange company (ASTAC) was scheduled to go to hearing before the RCA on March 18, 2003. The case was settled by stipulation on February 27, 2003. The major issue in dispute in the case involved ASTAC's request for a 13% return on equity which would result in a 18.6% rate increase. The case was resolved with ASTAC agreeing to accept the Public Advocacy section's recommendation that ASTAC should only be allowed an 8.58% return on equity. The impact of this agreement on Barrow's telephone rates reduces ASTAC's requested

rate increase by 2.1%. AAG DeVries represented the Public Advocacy section in this proceeding.

Governmental Affairs

DEFINITION OF “POLITICAL PARTY” CHALLENGED

The Alaska Libertarian Party and its treasurer have sued the state and the commissioners of the Alaska Public Offices Commission in United States District Court, asserting violations of their constitutional rights of equal protection and political association. The plaintiffs claim that APOC has violated their rights by applying the definition of “political party” that appears in Alaska’s campaign-finance statutes to determine whether the Libertarian Party qualifies for the higher limits on campaign contributions that apply to political parties. They contend that the Libertarian Party should receive the benefit of the higher contribution limits – even though it no longer satisfies the definition of “political party” in the campaign-finance statutes – because it meets the definition in Alaska’s election statutes.

PARTY APPEALS DECISION UPHOLDING APOC’S AUTHORITY TO ADOPT REGULATION REQUIRING DISCLOSURE OF SOFT MONEY

The Alaska Libertarian Party and Kenneth P. Jacobus have appealed Judge Mark Rindner’s decision that the Alaska Public Offices Commission had authority to adopt its soft-money disclosure regulation. That regulation – 2 AAC 50.327 – requires political parties to disclose information about all soft money they receive, including how they spend it. “Soft money” describes donations that do not meet the definition of “contribution” under the campaign-finance laws, *i.e.*, donations that are not made for the purpose of influencing the

nomination or election of a candidate or influencing a ballot proposition or question. The plaintiffs asserted that, because the regulation requires disclosure of donations and spending that do not meet the statutory definitions of “contribution” and “expenditure,” the APOC had no authority to adopt the regulation. Judge Rindner disagreed and then granted the plaintiffs’ motion to enter final judgment on that issue, allowing the plaintiffs to appeal the decision to the Alaska Supreme Court.

Legislation/Regulations

OVER 50 STATE EMPLOYEES ATTEND BASIC REGULATIONS TRAINING

On February 20, 2003, the legislation and regulation section presented a basic regulations training session for state agencies. It was conducted by videoconferencing to Anchorage. The discussion was lively and the information presented was well received.

Also during February the section prepared legislation and executive orders for the governor’s consideration. The regulations attorney also provided an overview of the regulations adoption process to the Administrative Regulation Review Committee.

The section also conducted final legal reviews of Board of Parole regulations, Department of Health and Social Services regulations for Medicaid “proportionate share” payments to hospitals, regulations for the fishermen’s fund, Division of Insurance regulations for money held in a fiduciary capacity by licensees, Regulatory Commission of Alaska regulations on the role and powers of the commission’s public advocacy section, and Board of Fisheries regulations for Chignik Area.

CITY OF ST. PAUL v. STATE, DNR

On February 7, AAG John Baker filed the state's superior court brief in *City of St. Paul v. State, DNR*, an administrative appeal from a decision by the commissioner of DNR to order a survey of the mean high water line to demarcate a tidelands conveyance to the City under AS 38.05.825. The City challenged the commissioner's decision as usurping a judicial function to determine the legal boundary between uplands and tidelands. DNR's position is that applicable statutes and regulations require a determination of the MHWL; that the agency has primary jurisdiction to determine what land it is conveying; and that the City erroneously depicts the case as a boundary dispute between quiet title claimants.

**COURT OF APPEALS RULES FOR STATE
IN TAKING OF GAME CASE**

On February 14, AAG John Baker and Kodiak ADA Joe Slusser received a favorable decision from the Alaska Court of Appeals in *Brigman v. State*, an appeal from a criminal conviction for illegal taking and transporting of game. Brigman participated in the killing of a brown bear during the spring 2000 permit hunt in GMU 8 (Kodiak). The bear was taken in subunit 232, while the permit had been issued for subunit 258. Among Brigman's various arguments was the claim that ADF&G's assignment of permit hunters to subunits was invalid because it had not been achieved by a discrete regulation adopted under the APA. The state countered that an existing regulation – 5 AAC 92.052(7) – authorizes ADF&G to assign hunters to subunits as conditions of their permits, without adopting a discrete regulation to establish subunit boundaries.

The court of appeals construed ADF&G's authority narrowly, questioning the department's authority to create subunits; however, the court found that existing subunits were validly created, and that nine subunits had been expressly ratified by the Board of Game in 5 AAC 92.061(5). The court also rejected Brigman's additional challenges to his conviction, but remanded to the district court for clarification of the extent to which the trial court relied on certain testimonials in sentencing. On March 4, Brigman filed a petition for hearing before the Alaska Supreme Court.

**ARGUMENTS PRESENTED IN
ALASKA v. UNITED STATES, ORIGINAL
NO. 128**

In February, AAGs Joanne Grace and Laura Bottger presented the state's arguments in the U.S. Supreme Court case *Alaska v. United States*, Original No. 128. Attorney General Gregg Renkes gave the opening statement on the first day.

In this case, the state asserts that it holds title to the submerged lands surrounding the mainland and islands of the Alexander Archipelago in Southeast Alaska, including those within the boundaries of Glacier Bay National Monument and the Tongass National Forest at statehood. The state and the United States presented the arguments, which lasted for two days, to a Special Master who was appointed by the Supreme Court to consider the evidence and make a recommendation on the outcome.

**"RECORDABLE DISCLAIMER OF
INTEREST" APPLICATION FILED WITH
INTERIOR**

Also in February, the Governor submitted to the Secretary of the Interior Alaska's first application for a "Recordable Disclaimer of Interest." We are working with the Department of Natural Resources and the Department of Fish and Game on this matter.

The application was for the submerged lands of the Black River in Interior Alaska. New amendments to BLM regulations permit states to request that BLM evaluate federal title in a particular area and to disclaim interest on behalf of the United States if appropriate. Alaska is interested in using the process to definitively establish title to lands underlying its many navigable rivers and lakes - as title is important to state jurisdiction - and will file applications on other waters regularly.

MOTION TO INTERVENE FILED IN ENDANGERED SPECIAL ACT CASE

The state filed a motion to intervene as a defendant in *Greenpeace v. National Marine Fisheries Service*, a case involving claims under the Endangered Species Act and the National Environmental Policy Act. The plaintiffs contend that the federal fisheries that occur adjacent to state waters have violated those acts, to the detriment of the western stock of Steller sea lions, which are listed as endangered under the ESA. The state has intervened in order to protect interests of Alaskans in the federal fisheries, and to guard against impacts on fisheries in state waters. The case is before Judge Zilly in the Federal District Court for the Western District of Washington.

POGO MINE PROPOSED DECISIONS

The Fairbanks Natural Resources section assisted DNR in drafting the proposed decisions for development of the Pogo Gold Mine, an underground gold mine near Delta Junction. The state's decisions include material sales for gravel and materials for construction of a 49-mile all-season road, a long-term surface lease for a maintenance/staging area for equipment personnel and materials, a right-of-way for the 49-mile access road, a powerline right-of-way to provide electrical services to the mine, and a millsite lease to authorize surface activities at the minesite. The federal DEIS and the state's draft decisions are available for

comment until May 13, 2003.

U.S. SUPREME COURT TO CONSIDER RED DOG APPEAL

The U.S. Supreme Court has accepted the state's petition of writ of certiorari to review a Ninth Circuit Court decision affirming EPA's assertion of veto power over an air quality permit that ADEC issued to the Red Dog Mine. The case raises significant issues about the extent of EPA's oversight authority over approved state permitting programs under the Clean Air Act. Ten states joined in an amicus brief urging the court to accept the petition, and we expect a similar or greater level of amicus support on the merits. Our opening brief is due April 25, with oral argument expected in October 2003.

Special Litigation

JURY RETURNS VERDICT FOR STATE IN CASE AGAINST CORRECTIONS

The Special Litigation was successful in defending the Department of Corrections before a 12-person jury in February. A former inmate, pro se, sought damages for a head injury allegedly suffered after slipping on a wet kitchen floor. AAG Randy Olsen appeared all five days without a suit (wearing a tie and pull-over sweater) and purposely avoided high-tech demonstrations to minimize any apparent advantage to the state in resources and trial experience. He also did NOT make some arguments at summation to keep from overwhelming the plaintiff and creating any sympathy for him. The jury responded to the strategy with a verdict for the defense after one hour and 45 minutes, which included lunch. A motion for attorneys' fees and costs is pending.

Transportation

ATM BID PROTEST DENIED

A disappointed bidder protested the award of a concession contract for the provision of ATM machines at the Ted Stevens Anchorage International Airport. AAG John Steiner helped the director of the airport review the protest. The director issued a decision denying the protest. The protester did not appeal.

SNOWBLOWER PROTEST DENIED

A potential bidder protested the need for specifications DOT&PF required for large snowblowers. DOT&PF denied the protest. The bidder then protested the award of a contract. DOT&PF denied the protest. The bidder also complained to the federal funding agency, which supported DOT&PF's decisions. AAG Gary Gantz assisted DOT&PF.

SETTLEMENT REACHED IN DOT&PF MATERIALS SITE LITIGATION

This federal administrative proceeding concerns a conflict between two Native allotment applications and a materials site granted to the state in 1965 by the BLM. This matter has been in litigation since 1988. (There is never a rush to judgment in allotment proceedings in Department of the Interior!) In 1995 the Interior Board of Land Appeals issued a decision in which the matter was referred to an Administrative Law Judge for a hearing on the question of whether the land covered by the material site grant was "mineral-in-character as of July 19, 1965". *State of Alaska (Johnson & Craig)*, 133 IBLA 281, 293 (1995).

In the summer of 2002, the Office of Hearings and Appeals set the hearing date for March of 2003. The state was confident of its position,

since the material site had been active from about 1953, and continues to remain an important material site for the Glenn Highway to this day. The state had an excellent mineral-in-character report prepared by a geologist to back up its position. Having been in litigation for so long, it seemed unlikely that the case would settle. However, on the notion that it never hurts to ask, the state made an offer to settle by giving up 5.66 acres of the 27 acre material site. This 5.66 acres was land the state determined it could not use for environmental reasons. The settlement offer was accepted and the case finally resolved.

Criminal Division

ANCHORAGE

A St. Paul jury returned a verdict of guilty, on all charges, against Carl Mercurief Jr. for the murder of Timothy Harris, a member of the coast guard stationed on St. Paul Island. Mercurief was in Anchorage when he learned that Harris was seeing Mercurief's wife, from whom he was separated. Mercurief flew back to St. Paul and executed Harris in the early morning hours of July 24, 2001. He then went to his wife's home and assaulted and terrorized her. Sentencing is set to occur in St. Paul in May.

Billy Dean Smith was convicted at trial of two counts of first-degree murder. Smith was charged with the shooting deaths of a Kenai couple in 1994. The remains of the couple were never recovered; the evidence at trial indicated that Smith had chopped up their bodies and dumped them into deep water near Homer. This was the third trial against Smith; the first trial in Kenai had been declared a mistrial. The second trial which was held in Anchorage had ended in a hung jury. Smith is expected to be sentenced in Kenai in April.

Michelle Pungowiyi pleaded no contest to felony DUI, manslaughter and felony assault for the July 23, 2002 vehicular crash that killed Chaz Crabb, 17-years-old. Pungowiyi ran a stop sign and struck the vehicle in which Crabb was a passenger, killing him and injuring her own passengers and others in Crabb's car. Pungowiyi had a previous felony DUI conviction. She was given a composite sentence of 18 years, with five years suspended. She will be on probation for 10 years.

Lamar Gathers was sentenced to 109 years with 10 years suspended for murder and attempted murder on August 28, 2001. Gathers, then 19 years old, climbed a ladder into an Eagle River home and hacked Dustin Gard to death with a hatchet. He sliced away at Gard's girlfriend, Bridgette Blezinski, opening her head and severing the bone in her forearm. She talked him out of finishing her off and managed to escape. Both victims were also 19. At the sentencing, the prosecutor described the hatchet attack as "straight out of a Hollywood terror movie". He argued for a sentence that would keep Gathers behind bars for the rest of his life because the minor grievance Gathers had against Gard and Blezinski could not explain what he did – Evil was a better explanation. In sentencing Gathers, the Judge found that the prospects for Gathers' rehabilitation were grim.

Eighteen-year-old Benajah Shipp was charged with murder and manslaughter for the shooting death of 15-year old Barry Wold. Shipp told investigators and others that he had been playing with what he thought was an unloaded handgun when it fired, striking Wold in the head. Investigation revealed that Shipp had been cleaning the gun earlier in the evening.

James and Maria Hungai were indicted on multiple counts of sexual abuse of a minor. The original complaint filed by the Anchorage Police Department detailed the charges which involve defendant Maria Hungai holding down

her 12-year old daughter while step-father James Hungai repeatedly raped her. Trial is scheduled for the week of April 28.

The homicide/rape trial against Joshua Wade continued through the month of February.

BARROW

After a three-day jury trial, Steven Leavitt was convicted of misdemeanor assault, but acquitted of felony assault. The intoxicated defendant told a police officer who was escorting the defendant's family from his house that he could shoot the officer if he wanted and then retrieved a rifle from the house and walked outside. The officer did not see the defendant with the rifle until the defendant had turned around and was walking back into his house where he remained. Rather than risk any injuries, the officers decided to retreat and file charges at a later date.

BETHEL

There were four jury trials in Bethel in February with mixed results. In the grand jury three people were indicted for misconduct involving a controlled substance, three for felony DUI, one for tampering with evidence, and one for sale of liquor without a license. In violent crimes, five people were indicted for felony assault, seven for sexual assault or attempted sexual assault and one for sexual abuse of a minor.

FAIRBANKS

The Fairbanks office remained extremely busy, laboring in the absence of two attorneys studying for and taking the bar exam, one vacancy, and other attorneys attending a variety of training opportunities.

Brian Yoder was indicted for perjury for falsely swearing on a second application for post-

conviction relief that he had never previously filed a PCR.

Clinton Huntington plead out and was sentenced to jail for nine months and a \$5,000 fine for falsifying his income to obtain the services of a public defender. When a defendant is permitted out on bail to maintain employment on the North Slope, there is a basis for examining their sworn verification of assets and income.

Theodore Jenkins entered a plea to first degree sexual abuse of a minor and possession of child pornography involving three adolescent boys. The defendant would watch the boys while they were sleeping, remove their clothing, and with one boy engaged in sexual acts, all of which he photographed. Tens of thousands of images were stored on four computers seized at this residence. Although the victims were unaware of the conduct, the defendant was identified in part by a distinctive mole on one hand, which was clearly visible in some of the pictures.

Jeff O'Bryant obtained a conviction against two defendants for the attempted kidnapping and assault of a woman that allegedly owed drug money to a third defendant, who was ultimately acquitted of charges against him.

Corinne Vorenkamp convicted Matthew Cloyd of stalking and numerous counts of violating a domestic violence protective order obtained by his estranged wife.

Robert Kerr plead to assaulting his teenaged son with a sheathed sword for not cleaning the house adequately.

JUNEAU

The three-attorney Juneau office was down to two attorneys in February, after the retirement of Susan McLean. And Juneau DA Rick Svobodny was knee-deep in pretrial proceedings leading to a trial of a Ketchikan murder that has had two mistrials already.

Rick managed to convince the superior court to move the trial to Juneau after failing to get a fair jury in Ketchikan. (The petition for review of that change of venue was handled by OSPA.) That left ADA Doug Gardner to cover two superior courts, a district court and the grand jury, so the central office pitched in by loaning AAGs Kurt Twitty, Marilyn Kamm and Deputy AG Pat Gullufsen on a more-or-less rotating basis.

KENAI

Billy Smith was convicted of two counts of murder in the first degree as a result of the Herculean efforts of ADA John Wolfe, with the assistance of John Hocker. These efforts were particularly noteworthy because this was a "no body" case and was the third trial of the defendant on these charges. The first trial ended in a mistrial when a witness mentioned the existence of a polygraph. The second trial was moved to Anchorage and started only days after the first one ended. This second was a hung jury on the murder charges, although the jury did convict on three counts of tampering with evidence. The jury in the third trial, which was also held in Anchorage, was given the case on a Friday, deliberated through the weekend, and presented their guilty verdicts later into the week. The wait seemed endless.

This year's theme of multiple-defendant cases continued into February, in which another of these groups of young defendants, with a particularly out-of-control ringleader, was charged with a series of burglaries and assaults. In these assaults, a knife and other weapons were used.

In Seward, Stacy Gamble was tried on charges of felony DUI, felony vehicle theft, and driving with a revoked license. He was convicted on all counts.

KETCHIKAN

Two jury trials were held in February. John Savage of Metlakatla was convicted of assault in the fourth degree for assaulting his wife. He hit her causing her nose to bleed. His defense was that she suffers spontaneous nosebleeds, but the jury did not buy his defense.

David Halsted was found not guilty of assault in the fourth degree, but ironically was found guilty of interfering with the report of a domestic violence crime.

In Wrangell, William Gablehouse shot and killed his estranged girlfriend and also shot and killed her 18-year-old daughter and her 24-year-old niece. He then committed suicide when he shot and killed himself.

A man from Coffman Cove was indicted for kidnapping and assault in the third degree for keeping his girlfriend in their house and threatening to shot and kill her and himself.

Other people were indicted for failure to register as sex offenders, burglary in the first degree, theft in the second degree, assault in the second degree, and forgery in the second degree.

KODIAK

A Kodiak man was convicted of misconduct involving a controlled substance in the third degree, after selling a gram of cocaine to an undercover operative working with the Kodiak Police Department. He was sentenced to 45 months in jail, with 36 months suspended, and placed on supervised probation for five years. Another Kodiak man was indicted for two counts of misconduct involving a controlled substance in the third degree, after selling two grams of cocaine to an undercover agent of the Kodiak Police Department in two separate controlled buys. A May trial date is pending.

The "any port in a storm" award goes to a Kodiak man caught red-handed attempting to

steal a truck down near the dock. The owner of the truck was in a local welding shop when he thought he heard his truck being started, and grabbed a piece of the two-inch pipe he was welding and went in pursuit on foot. When the truck stalled in the middle of the road less than a block away, the thief jumped out of the truck and started running. The owner of the truck didn't slow down as he passed his stalled truck and continued to chase the thief. When the thief could not outrun the pipe-wielding owner, he ducked into a port-a-potty and locked himself inside, where he was found by police being guarded by the truck owner. He was subsequently indicted for vehicle theft in the first degree, and charged with driving while intoxicated as well. An April trial date is pending.

KOTZEBUE

A four-day trial on charges of DUI and refusal was conducted. The trial was lengthy because the defendant claimed that he did not understand English and used an interpreter throughout the trial (most local residents and the police who knew the defendant felt that his command of English was usually excellent). He was acquitted on the DUI charge but found guilty on the refusal count.

A man was indicted on felony burglary and theft charges, along with tampering with evidence. He is alleged to have broken into the Selawik police department and stolen alcohol that had been seized as evidence in other cases.

Also indicated was perennial defendant Carl Custer of Shungnak. Custer was arrested on a felony domestic violence assault and taken to the Shungnak Public Safety building. There are no bathroom facilities in that building, so Mr. Custer was allowed to go outside to relieve himself. Once outside, he fled. He was later caught again by the village police along with assistance of a village

search crew, the Shungnak version of rounding up the posse.

Also indicted were two men on felony DUI charges and another for first-degree sexual abuse of a minor.

NOME

In a DUI case prosecuted by ADA John Earthman, the officer had his recorder running, including when the defendant defecated in his pants. That recording was introduced at trial (along with the breath test results of .334%), and the jury was obviously amused. The jury deliberated about an hour, and we later learned that a substantial portion of that time was spent speculating on why the defendant went to trial.

A man was indicted for second-degree sexual assault and burglary, after he observed an intoxicated 16-year-old girl being carried home from a party by her friends, and then entered the girl's residence and had sex with the passed-out victim. He was discovered in the residence when the girl's friends returned to check on her. Another Nome resident was indicted on a similar offense, when there were independent witnesses concerned about the welfare of the incapacitated victim.

Harold Rivers, a village police officer in Stebbins was indicted for sexual abuse of a minor in the third degree for fondling a 14-year-old girl. The girl had spent the night with Rivers and his girlfriend when bad weather forced a visiting high school basketball team to spend the night in Stebbins.

Several new drug cases were referred. An informant tipped the troopers off that a Koyuk man was expecting a shipment of marijuana to be delivered through an airline express service. In the Anchorage airport, a drug detection dog went through the Alaska Airlines goldstreak packages and hit on a package that was initially thought to be the one. It turns out that the troopers just got lucky, because that

package was headed to another person in Koyuk. After warrants were obtained and served, the second man was arrested on a felony drug charge. Two days later, the first man's package showed up. Again, warrants were obtained and served and the first man was arrested on similar charges.

OSPA

(Office of Special Prosecutions & Appeals)

Prosecution News

The statewide welfare fraud prosecutor convicted a woman of third-degree theft and unsworn falsification for welfare fraud, and ordered to pay \$2,075 in restitution. Another woman was charged with felony theft and five counts of unsworn falsification for allegedly fraudulently receiving over \$27,000 in public assistance since 1995.

The statewide Fish & Game prosecutor brought charges against North Pacific Processors and Yardarm Knot Fisheries LLC for waste of herring.

The statewide Alcohol Interdiction prosecutor indicted eight bootleggers on various charges in Kotzebue and Anchorage.

Petitions & Briefs of Interest

Petitions of Interest

Two groups of minors charged with minor consuming alcohol filed petitions for review in the court of appeals arguing that mandatory probation until they were 21 violates substantive due process, equal protection, and is cruel and unusual punishment. After responses prepared by Mick Hawley, the court of appeals denied the petitions in record

time – four days. *Fleagle v. State*, A-8512; *Anaruk v. State*, A-8521.

After two trials in a first-degree murder case in Ketchikan resulted in hung juries, the state moved for a change of venue to Juneau for the third trial. After denying the state's pretrial motion and two renewed motions during voir dire to change venue, the trial judge granted the state's motion after a jury had been seated. The defendant filed a petition for review in the court of appeals. In response, the state argues that the trial judge went to great lengths to seat the jury for the third trial in Ketchikan, but properly granted the state's motion after becoming convinced that there was a strong possibility that the jurors seated to hear the case harbored unrevealed or unexpressed biases for or against one of the parties. *Mateu v. State*, A-8529.

Briefs of Interest

The state argues that the trial court correctly found that the defendant's consultation with his attorney was not impaired by the defendant's knowledge that he was being videotaped while conferring with his attorney over the telephone. A defendant's right to confer with an attorney upon arrest is guaranteed by AS 12.25.150(b) and encompasses the right to confer privately with the attorney. *Peters v. State*, A-8133.

The state argues that once the defendant, who was being charged with assault, took the stand and testified that he was not a violent person, the trial court correctly allowed the prosecutor to cross-examine the defendant about his prior assault convictions. When the defendant then testified on redirect that he had improved after those convictions and was no longer a violent person, the court correctly allowed the prosecutor to further cross-examine the defendant about more recent assaultive conduct for which he was charged but never convicted. *East v. State*, A-8036.

Court Decisions of Note - Alaska

Statute and Rule Interpretations

Escape statutes apply to defendants who escape from where they are being held after being found not guilty by reason of insanity. The court of appeals interpreted the second-degree escape statute (AS 11.56.310(a)(1)(B)), which criminalizes escape from "official detention for a felony," as applying to a defendant who escapes from a mental institution where he is being held after an adjudication of not guilty of murder by reason of insanity. *Alto v. State*, Op. No. 1856 (Alaska App., February 14, 2003).